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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,809	10/19/2001	Dietmar Rudolph	520.1004	8344

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DARBY & DARBY P.C.  
P. O. BOX 5257  
NEW YORK, NY 10150-5257

EXAMINER
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SWERDLOW, DANIEL

ART UNIT	PAPER NUMBER
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2615

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/09/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/980,809	<b>Applicant(s)</b> RUDOLPH, DIETMAR	
	<b>Examiner</b> Daniel Swerdlow	<b>Art Unit</b> 2615	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 December 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8 and 10-13 is/are allowed.
- 6) ☒ Claim(s) 4-6 and 9 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 5 and 9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The recitation in the claims of the digital radio transmission being a type of broadcast transmission for which a digital radio mondiale system recommended by an international telecommunication union establishes that a reception quality and a coverage reliability be not worse than for an analog transmission and that a same quality be guaranteed for mobile reception as for stationary reception, and that several transmitters are useable on a same frequency with a same program into approximately a same target area as with the analog transmission is not supported in the original disclosure as filed with the international application on 7 April 2000.
3. Applicant's amendment to Claim 12 overcomes the rejection of that claim under 35 USC 112, first paragraph made in the previous Office action.

### ***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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5. Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laurent (WO 98/24201) in view of Wilkens and further in view of well-known prior art.

6. Regarding Claim 4, in addition to the elements shown above apropos of Claim 12, Wilkens discloses regulation of transmitter power in response to the received parameters (i.e., influencing modulation). Therefore, the combination of Laurent and Wilkens makes obvious all elements except use of an Internet as a feedback channel. Examiner takes official notice of the fact that use of an Internet to transmit information was well known at the time of the invention. One skilled in the art would have known that use of the Internet provides economical and flexible communications. It would have been obvious to one skilled in the art at the time of the invention to apply the well known Internet to the combination made obvious by Laurent and Wilkens for the purpose of realizing the aforesaid advantages.

7. Regarding Claim 6, Laurent further discloses a broadcasting system (column 1, lines 9-13).

***Allowable Subject Matter***

8. Claims 8 and 10 through 13 are allowable.

9. Claims 8, 10 and 11 are allowable for the reasons stated in the previous Office action.

10. Regarding Claim 12, Laurent discloses a system for digital radio broadcasting using an amplitude modulation (AM) transmitter in a shortwave range (column 1, lines 9-15). Wilkens discloses a digital radio transmission system (Fig. 1) with a backward channel ( $T_B$  to  $R_A$ ) for a quality estimate of the signal received by a receiver 20 that is used to adjust the power level of the transmitter to maintain reception quality and coverage reliability (column 2, lines 23-49).

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However, neither Wilkens nor Laurent discloses preselecting a stronger coding or modulation for the target area, as claimed. Because the prior art fails to disclose all elements of the claimed invention, Claim 12 is allowable.

11. Regarding Claim 13, as shown above apropos of Claim 12, Wilkens and Laurent in combination teach all elements except automated switchover to an alternative transmit frequency, as claimed. Because the prior art fails to disclose all elements of the claimed invention, Claim 13 is allowable.

12. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 7 is allowable matter for the reasons stated in the previous Office action.

### ***Response to Arguments***

13. Applicant's arguments with respect to Claims 4, 5 and 9 filed 1 December 2006 have been fully considered but they are not persuasive.

14. In the second and third paragraphs on page 8 of the response filed on 1 December 2006, applicant alleges that the subject matter of Claims 5 and 9 (i.e., the digital radio transmission being a type of broadcast transmission for which a digital radio mondiale system recommended by an international telecommunication union establishes that a reception quality and a coverage reliability be not worse than for an analog transmission and that a same quality be guaranteed for mobile reception as for stationary reception, and that several transmitters are useable on a same frequency with a same program into approximately a same target area as with the analog

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transmission) was described in the original specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. Examiner respectfully disagrees. Because there is no disclosure of the digital radio mondiale system in the specification filed with the original PCT application, there is no evidence that the inventor had conceived of the use of the invention with such a system as of that date. Applicant's citation of paragraphs 0001.1-0001.3 is ineffective since these paragraphs were added by preliminary amendment on 19 October 2001.

15. In the paragraph spanning pages 10 and 11 and the first complete paragraph on page 11 of the response, applicant alleges that Wilkens fails to disclose "influencing at least one of a number of modulation stages" as recited in Claim 4. Examiner respectfully disagrees. As applicant admits, Wilkens discloses regulation of the power output of amplifier 14 by the operation of attenuator 41. Because the attenuator and amplifier combination controllable varies the radio frequency output of the transmitter, it clearly constitutes a modulation stage, as claimed.

### ***Conclusion***

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Swerdlow whose telephone number is 571-272-7531. The examiner can normally be reached on Monday through Friday between 7:30 AM and 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh H. Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Daniel Swerdlow  
Primary Examiner  
Art Unit 2615

ds

5 February 2007